IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3930 OF 2007

1. Smt. Mukulika S. Jawalkar)
aged 42 years, r/o 225, Canal Road,)
Gokulpeth, Nagpur.)

2. Mrs. Vrushali Vijay Joshi,)
aged 42 years, r/o Sursamgam Apartments,)
Trimurti Nagar, Nagpur.)

3. Shankar Fakira Rathod,)
aged years, r/o Q. No. 17 Type IV,)
Ravinagar, Govt. Quarters, Civil Lines,)
Nagpur.)

4. Hemant S. Rahangdale, aged 37 years,)
r/o 100, N.H. Society, Jaiparakash Nagar,)
Khamla, Nagpur.)

5. Mrs. Sadhana S. Badhiye, aged 44 years,)
r/o 144, Parinay Apartment, Ambazari Till)
Top, Nagpur.)

6. Kavita S. Nikhade, aged 42 years,)
r/o Giripeth, Nagpur.)

7. Manoj Kumar Mishra, aged 41 years,)
r/o Malbar Colony, Opp. Lad College,)
Seminary Hills, Nagpur.)

8. Dayashankar A. Sonawane, aged years,)
R/o Near Gautam Buddha Nagar, Nagpur.)

9. Rajiv Balgovind Hingnekar, aged about 41 years,)
R/o 18, Datey Layout, Datta Nagar, Near)
Swawlambi Nagar,Nagpur.)
10. Jyotsana Harihar Shendey)
aged about 43 years, R/o Parvati Nagar,)

Behind Jevan Shikshan High School, Nagpur.)..Petitioners

versus

1. The State of Maharashtra, through its)
Secretary, Law and Judiciary Department,)
Mantralaya, Mumbai.)

2. The High Court of Judicature at Bombay,)
through the Registrar General, Fort, Mumbai.)..
Respondents

WITH

WRIT PETITION NO. 4644 OF 2007

1. Devanand s/o Bhaskarrao Aradhye,)
age 45 years, Occ. Legal profession,)
r/o Deshpande Galli, Latur.)

2. Shivkumar s/o Ganpatrao Dige,)
age 35 years,, Occ. Legal profession,)
R/o Kailas Nagar, Latur.)..Petitioners

Versus

1. The State of Maharashtra, through its)
Secretary, Law & Judiciary Department,)
Mantralaya, Mumbai.)
(Copy to be served on the Government Pleader,)
High Court of Bombay, Bench at Aurangabad))

2. The High Court of Judicature at Bombay, through)
its Registrar General, High Court, Bombay.)

3. The Honourable the Chief Justice,)
High Court of Judicature at Bombay)..
Respondents

WITH

WRIT PETITION NO. 4645 OF 2007

1. Ranjana d/o Dattatray Reddy, age 46 years)
Occupation. Advocate, R/o Tirupati Park,)
G-3, N-4, CIDCO, Aurangabad.)

2. Veena d/o Madhukarrao Potrekar,)
age 41 years, Occupation. Advocate,)
r/o Ausargaun, Dist. Nanded.)

3. Sunita d/o Naganath Supare,)
Age 38 years, occupation Advocate, R/o Vasant)
Nagar, Nanded, Tq. Dist. Nanded.)

4. Archana d/o Shrikrishna Singh, age 36 years,)
Age 36 years, Occupation. Advocate, R/o Kailash)
Nagar, Nanded, Tq. & Dist. Nanded.)

5. Shivaji s/o Sarjerao Nimbalkar, age 45 years,)
Occupation: A Public Prosecutor,)
R/o Snehnagar, Aurangabad)

6. Sunil s/o Prabhudev Sonpawale, aged 42 years,)
Occupation: Advocate, R/o 235, Ulkanagari,)
Shubhahari Apartment, Sahayog Nagar,)
Garkheda Parisar, Aurangabad.)

7. Sanghmitra d/o Bansidhar Wadmare,)
Age 46 years, Occ. Advocate,)
R/o 17, Pragati Colony, Makai Gate, Aurangabad)..Petitioners

Versus

1. The Registrar General, High Court,)
Bombay-400 032.)

2. The State of Maharashtra, through Law and)
Judiciary Department, Mantralaya, Mumbai.)
3. The Hon'ble Chief Justice,)
High Court, Bombay at Mumbai.)..
Respondents

Mr. Shrihari G. Aney, Senior Advocate, instructed by Mr. Amit Karkhanis, for the petitioners in Writ Petition No. 3930 of 2007.

Mr. Jagdish Reddy, instructed by Mr. S.B. Talekar, for the petitioners in Writ Petition No. 4644 of 2007.

None for the petitioners in Writ Petition No. 4645 of 2007.

Mr. A.A. Kumbhakoni, Associate Advocate General, with Mr. R.D. Rane, Government Pleader, for respondents in all petitions.

CORAM: **SWATANTER KUMAR, C.J.** & **SMT. RANJANA DESAI, J.**

Judgment reserved on : July 04, 2007
Judgment delivered on: July 19, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

`Judge' is a generic term. The other terms like umpire, arbiter and arbitrator are only species of judge. A judge determines all matters of disputes and pronounces what is law, now as well as what will be law for the future, and acts under the appointment of the Government. Pollock C.B. Ex parte Davis (1857), 5 W.R.523 said that "judges are philologists of the highest orders". They are not mere administrative officers of the Government but represent the State to administer justice. His functions are to judge a cause and conduct trial according to the legal form and norms and give relief to the party. He does nothing for his own judgment or from a dictate of private will but

he will pronounce according to the law and justice. *Judex debet judicare secundum allegata et probata*, is a maxim which controls the functioning of a judge. The framers of the Constitution of India, to achieve the goal, stated in the preamble of the Constitution of India in regard to justice and equality incorporated in, amongst others, Articles 233 and 235 and vested control in the High Courts over the subordinate courts. The Supreme Court clearly stated that judges, at whatever level they may be, represent the State and its subordinates unlike bureaucrats or members in other services. Judges were said to be discharging sovereign functions in exercise of their judicial power and power in contra distinction to the public service. In a largest democracy of the world, governed by rule of law under the written constitution, judiciary is the sentinel on the qui vive to protect the fundamental rights and protect the people from any violation of law and grant them justice. The concept of judicial independence, being a wider concept, indicates independent functioning of every judge, free of fear, interference and breaches. Judiciary, was said to be composed of individual persons to work primarily on their own, free of restrictions, but in consonance with law. The Supreme Court in 1997(6) SCC 339 held as under:

> " The Constitution of India has delineated distribution of sovereign power between the Legislature, the Executive and the Judiciary. The judicial services is not service in the sense of employment. The Judges are not employees. As members of the judiciary, they exercise sovereign judicial power of the State. They are holders of public offices in the same way as the members of the Council of Ministers and the members of the Legislature. It is an office of public trust and in Indian democracy, the Executive, the Legislature and the Judiciary constitute the three pillars of the State. Three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service."

2. Emphasising importance and responsibility of the trial judge, the court described that the trial judge is the kingpin in the hierarchical system of administration of justice, he directly comes in contact with the litigants during the day to day proceedings and dispensation of justice. Faith in judiciary are the facets of the judicial administration to which they contributed substantially. It is essential to maintain faith of common masses in the judiciary, failing which it would lose its respect and esteem. Law is meant to meet the ends of justice. The Supreme Court said that the conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough and courteous, patient, punctual, just, impartial, sans political or partisan influences; he should administer justice according to law and deal with

his appointment as a pubic trust; he should not allow other affairs or his private interests to interference with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity. If he tips the scales of justice, its ripping effect would be disastrous and deleterious.

3. If that be the ethos of the post of District Judge, correspondingly should be the higher parameters for selection to that post. Parameters and criteria should be stringent for selection to that post. Of course, these parameters must be in conformity to the basic rule of law. Greater is the obligation upon the selection authorities to calibrate or drive a balance between the dignity of the post and the standards for selection. Merit and merit alone can be directional in proper selection and would be the hallmark to a just and fair process of selection. Within the scope of Rules and Regulations governing the subject, the selection process needs to be free from any misdemeanour.

4. With an intent to keep these standards, the State of Maharashtra, in consultation with the respondent-High Court, issued an

advertisement on 3rd March, 2007, inviting applications for 18 existing and three probable vacancies for the post of District Judges in the judicial service of the State of Maharashtra. Various terms and conditions, which the applicants were required to satisfy, were stated in the said advertisement itself. The candidates were informed that they would have to appear for a competitive written examination which shall not be of less than two hours' duration with 200 marks whereafter they shall be called for viva-voce examination carrying 50 marks, provided they secure not less than 50% of marks at the written examination. Of course, for the Scheduled Caste/Scheduled Tribe candidates, the condition of minimum marks was reducible to 45% of marks. The candidates were required to fill up the application forms and submit the same for which the last date was 30th March, 2007. We may notice at this stage that the application form specified the instructions of which the candidate was expected to take note of and under clause 13 the candidate was to specify the marks obtained by him/her in the examination of law, while under clause 17 they were required to give full particulars of total duration of practice, the amount of professional net earnings during last three years and whether they paid income tax thereupon and was specifically required to annex income tax returns of previous three years. For these 21 posts, 1129

applications were received and the criteria adopted for shortlisting the candidates was that only those candidates who have secured 55% of marks in their law examination and had filed income-tax returns would be permitted to take the written examination and go through the selection process, subject to the terms and conditions stated in the advertisement and criteria adopted by the respondents.

5. The legality and correctness of this simple criteria and process for selection was questioned by 24 petitioners (persons who had submitted their applications in furtherance to the advertisement) by filing four different writ petitions, inter alia, but primarily on the grounds (a) that the respondents had no jurisdiction to fix any shortlisting criteria, the applicants should have been permitted to take the written examination and the action thus is contrary to the terms of the advertisement; (b) the criteria of shortlisting of 55 % of marks in LL.B. as well as income tax paid have no nexus to the object of a selection and is unjustifiable in law, and (c) that the advertisement and submission of the applications by the applicants had given them a fundamental right to the post in question. This right could not be taken away. The shortlisting and process of selection has thus denied them equality and has not been uniformly and reasonably applied to the

candidates and violates Articles 14 and 16 of the Constitution of India. They, in fact, are not “reasonable norms”.

6. Before we proceed to examine the merit or otherwise of the contentions raised before us, we may mention that in Civil Writ Petition No. 3927 of 2007, titled as *Mrs.Anneta Kiran Kataria and others* vs. *Secretary to the Government, Ministry of Law & Judiciary, Mantralaya and others,* where five petitioners had questioned the validity and adoption of shortlisting criteria in that petition. On an interim motion, the petitioners had prayed for holding of the written examination as well as the process of selection, a Division Bench of this Court passed a detailed order on 18th May, 2007, declining the relief. The order reads as under:-

> “ Heard Mr.Vechalekar, the learned counsel for the petitioners in Writ Petition No. 3927 of 2007 and ```Mrs. Chandekar, the learned Counsel for the Petitioners in Writ Petition No. 3930 of 2007 (transferred petition).
>
> 2. These petitions challenge the selection process adopted by the High Court of Bombay for filling up the post of District Judge. The said process has been challenged, inter alia, on various grounds urged in the petition, but primarily on the ground that the method of short listing adopted by the High Court is unconstitutional and arbitrary. The brief facts can be stated thus.
>
> 3. The High Court of Bombay issued an

advertisement dated 03.03.2007 calling applications for the post of District Judge, to be filled in by nomination. The posts to be filled in are from the quota of direct recruits. There are 18 vacancies at present, which were advertised along with 3 other vacancies, which are likely to occur in the current year. The said advertisement inter-alia sets out the terms and conditions for selection. Clause 10 of the said terms and conditions is relevant for the purposes of the present petition and is reproduced herein under:

" High Court reserves its right of short-listing at the time of scrutiny of applications by applying uniform and reasonable norms."

4. Pursuant to the said advertisement in all 1129 applications are received by the High Court. The High Court has in view of the directions of the Apex Court in the Judges' case for filling up the posts expeditiously has constituted a Committee for monitoring and overseeing the examination to be conducted. Looking to the number of applications received, the Committee was of the view that only those candidates who have secured 55% or above marks at the LL.B. Examination and pay income tax may be called for the written examination. It appears that the matter was then placed before the Hon'ble the Chief Justice who was pleased to direct to place the matter before the Hon'ble Full House of the High Court for approval. The Full House of the High Court in its meeting dated 29.04.2005 unanimously approved the said criteria for short-listing as recommended by the Committee.

5. On the applications of the said criteria, 170 candidates were short-listed for the written examination. The list of the said candidates was displayed on the web site from 30.04.2007. The petitioners in both the petitions being aggrieved by the fact that they were not called for the said written examination, have filed the instant petitions.

6. It is the submission of both the learned counsel for the petitioners that the High Court should be directed

to abide by the representation made in clause 6 that all eligible candidates will have to appear for written examination that would be held for the purposes of carrying out the said selection. The learned counsel further submitted that short-listing, if at all, can only be after the written examination and not prior to that. The learned counsel further submitted that the High Court having not disclosed the short-listing criteria at the threshold are now estopped from applying the same. The learned counsel submitted that the petitioners, in both the petitions, are all highly qualified though some of them may not be having 35% of marks at the LL.B. Examination or some may not be paying income tax. The method of short-listing, according to the learned counsel deprives the petitioners their right to participate in the said selection process and is, therefore, violative of Articles 14 and 16 of the Constitution of India.

7. On the other hand, Mr. Rane, the learned Govt. Pleader, submits that looking to the post concerned which is of the District Judge, the High Court on its administrative side has fixed a very rational criteria looking to the number of applications received and the number of posts available. Mr. Rane submitted that the said criteria has been adopted uniformly and only on the application of the said criteria the short listing has been done. Mr. Rane relies upon the affidavit filed by Mr. Hemant Sampat, Registrar (Legal) on behalf of the Respondents, which affidavit, inter alia, sets out the factual position as regards the number of applications received etc. and the manner in which the short-listing criteria has been fixed. Mr. Rane also relies upon the judgments of the Apex Court in the matter of *Government of Andhra Pradesh* vs. *P. Dilip Kumar* [1993 (2) SCC 10], *M.P. Public Service Commission* vs. *Navnit Kumar Potdar*, [1994 (6) SCC 293] *Union of India* vs. *Sundararaman and others [1997 (4)* SCC 664] in support of his contention that short-listing is an accepted method while carrying out any selection..

8. We have given our anxious consideration to the rival contentions. It is well settled by catena of judgments

of the Apex Court that short listing is an accepted method which can be adopted by the authorities making appointments to restrict the zone of consideration. The learned counsel for the petitioners contends that in the judgments cited by Mr. Rane the short-listing is as regards the persons to be called for the viva-voce and not for the written examination. The question in our view is not at what stage the short-listing can be done, but the principle laid down in the said judgments. The judgments cited by Mr. Rane would therefore be applicable in the instant case.

9. The contention of the Petitioners that the High Court was bound by the advertisement, and therefore, ought to have allowed all the applicants to appear for the examination in our view is fallacious in the teeth of clause 10 of the terms and conditions, which explicitly represents to the applicants that the High Court reserves its right of shortlisting at the time of scrutiny of applications by applying uniform and reasonable norms. The said condition circumscribes the other conditions. The petitioners contention that the criteria fixed having not been disclosed, cannot be relied upon is misfounded. The criteria for short-listing cannot be predetermined and has to be evolved looking to the number of applications received and the number of vacancies available. In our view, the criteria of 55% marks at the LL.B. And payment of Income Tax is a rational criteria, looking to the post involved i.e. of the District Judge and had, therefore, nexus with the object sought to be achieved that is to select the most meritorious from the applicants. We, therefore, do not find anything arbitrary or unconstitutional about the same.

10. Mr. Rane also brings to our notice an order, dated 17.05.2007, passed by the learned Vacation Judge at Aurangabad in a petition involving the same issue. The learned Vacation Judge at Aurangabad has refused interim reliefs.

11. The written examination is to be held on 21.05.2007. In the above view of the matter, we are of the

opinion that prima facie no case for grant of any ad-interim or interim relief is made out by the Petitioners.

12. The petitions to be posted for admission in the week commencing from 18.06.2007."

7. When the above petition came up for hearing before the regular Bench, it was dismissed as withdrawn at the request of the petitioners vide order of the Court dated July 04, 2007.

8. Besides the above order of the Division Bench, in Civil Writ Petition No. 2728 of 2007, the petitioners had prayed for grant of ex-parte injunction/stay of the process of selection at the Aurangabad Bench which prayer was also refused by the learned Vacation Judge vide order dated 17th May, 2007, which reads as under:

"Heard.

2. The High Court at Bombay issued an advertisement dated 3.3.2007 calling applications for the post of District Judge to be filled in by nominations. There are eighteen (18) vacancies to be filled up by direct recruitment and three (3) are likely to occur in the current year. A large number of applications were received and, therefore, short listing method is adopted by the High Court. The High Court decided to permit only those candidates, who have secured 55% or above marks in the L.B. Examination and have filed Income Tax Returns. This criteria for short listing is the subject matter of challenge in these two writ petitions.

3. Interim relief is sought by the petitioners. It is argued by the learned counsel Mr. Talekar and learned counsel Mr. Deshmukh that the criteria of short listing is arbitrary, unconstitutional and unreasonable. They would submit that the short listing method is improper and an opportunity of the applicants cannot be scuttled at the stage of appearance to compete in the examinations to be held.

4. Mr. Talekar, would strenuously argue that the classification for short listing is without reasonable nexus with the object to be achieved inasmuch as the object is to be pick up only the talented candidates. He would submit that only talented persons may get through the competitive examinations irrespective of the marks they have obtained at the LL.B. Level. He would further submit that the recruitment Rules do not provide for such short listing. He further point out from the Judgment reported in *"All India Judges' Association and others* vs. *Union of India and others (2002) 4 SCC 247* that no such short listing is provided for in respect of the posts of Civil Judge (J.D.) and J.M.F.C. He would point out that 50% of the promotional posts of District Judges are required to be filled in through the said channel. According to Mr. Talekar, when 50% of such promotional posts can be occupied by those, who do not require fulfillment of such criteria, it would be irrational and discriminatory to provide for separate yardstick only for the purpose of short listing in respect of the direct recruitment. In other words, he would submit that there is discrimination in respect of the criteria provided for two channels to fill in the post of District Judge. He would further submit that the nature of five years course provided by various Universities is different from the erstwhile three years course and that it causes lot of difference in the standards of obtaining the marks. He would further submit that the screening tests could be provided as laid down in *State of Punjab and others* vs. *Manjit Singh and others*, (2003) 11 SCC 559 for the purpose of shortlisting but short listing at the initial stage and then providing for the competitive written examinations is illogical.

5. Mr. Deshmukh, the learned counsel appearing for the other petitioners would submit that the short listing by itself is unconstitutional and illegal because it has objective of changing the initial criteria so fixed to become eligible for the post of District Judge. He would submit that such criteria cannot be subsequently changed after the advertisement is published. He would point out that though right of short listing is reserved by the High Court yet it does not give any legal sanctity to the methodology adopted while short listing on the ground of 55% of the marks as criteria as eligibility to appear for the competitive examination. He would further submit that the petitioners may be allowed to compete with the others as an interim measure and their results may be withheld till disposal of the petitions.

6. Mr. P.M. Shah, the learned senior counsel would submit that the short listing is one of the method followed for eliminating the candidates when the large number of applications are received. He would point out that the uniform yardstick is being applied without discrimination. He would further submit that mere eligibility of the applicants do not give any vested right to them to appear for the competitive examination. He would submit that when there are only 21 posts to be filled in by direct recruitment then assuming that for one post five candidates would be within zone of consideration then also sufficient number of candidates were found available after applying the uniform criteria of 55% minimum marks at the LL.B. Level and hence, the short listing cannot be faulted with. He also seeks to rely on various authorities, which are quoted in the reply affidavit. There are 170 candidates available to appear for the ensuing competitive examination.

7. There cannot be any duality of opinion that the employer has a right of short listing the candidates and only care and caution needed to be taken is that the method of short listing ought to be logical and based on uniform application of same yardstick. The argument that the screening test could be held is also not appealable

inasmuch as the competitive examination scheduled is as provided under the directions of the Apex Court in “All India Judges' Association vs. Union of India and others” (supra). Needless to say, the High Court cannot deviate from the directions which are given by the Apex Court in the above mentioned decision. The common competitive examination is scheduled for the post of District Judge to be filled in by the nominations as well as by promotion to the limited extent.

8. True, the candidate who has secured less than 55% marks may be eligible to appear for the post of Civil Judge (J.D.) and J.M.F.C. But it cannot be overlooked that the post of District Judge is the higher post which comes within the ambit of Article 236 of the Constitution and, therefore, the criteria for the two posts cannot be the same. The competitive examinations also may be of different standards. The channels of promotion and direct recruitment are different and, therefore, there is differential treatment to those who come from such channels. The differentia is based on certain classification, which cannot be termed as arbitrary. The classification provided herein is certainly concerned with the objective to be achieved i.e. The objective of selecting the best of the talent from the Bar. It is possible that some time mere marks secured in an examination may not be a criteria of success in the profession but ultimately such kind of stray example would not give any serious jolt to the uniformity of norms applied while short listing the candidates for the competitive examination. The probability that some of the candidates may be good enough, from the candidates who are left out and are those who have secured less than 55% marks at the LL.B. Level, by itself is not of much significance. That is not the area in which this Court is required to go into. The other possible solutions/criteria is not the subject matter of the present writ petitions. The criteria adopted by the High Court cannot be, prima facie, regarded as irrational, discriminatory, and arbitrary. Consequently, I am not inclined to grant any interim relief. However, the final result of the examination and the further process of the selection will be subject to the final decision in these writ petitions.

> 8. It is made clear that the above observations need not cause any effect at the time of final disposal of these writ petitions as they are based on only prima facie consideration of the matters. S.O. Till 5th June, 2007."

9. Writ Petition Nos. 2728 of 2007 and 2729 of 2007 were pending before the Aurangabad Bench, whereas Writ Petition No. 2140 of 2007 was pending before the Nagpur Bench and Writ Petition No. 3927 of 2007 was pending before this Court. It was directed that, in order to avoid conflicting judgments as well as for expeditious disposal of all the cases, the petitions pending before the Aurangabad and Nagpur Benches were to be heard by the Principal Bench at Bombay and consequently these writ petitions were transferred to Bombay and were renumbered. Thus these writ petitions were heard together and we shall proceed to dispose of all the remaining three writ petitions by a common judgment as the challenge is on identical grounds. In Writ Petition No. 3930 of 2007, the challenge was pressed only against the shortlisting criteria relating to income tax paid and given up the challenge in regard to introduction of 55 per cent marks in Law examination.

10. In support of the points of challenge raised by the petitioners,

it was argued that in the case of *"All India Judges' Association and others* vs. *Union of India and others (2002) 4 SCC 247,* there was no shortlisting provided in respect of the posts of Civil Judge, Junior Division, nor any such criterion was provided for promotional post of the District Judge and also that only screening test could be provided as laid down in the case of *State of Punjab and others* vs. *Manjit Singh and others*, (2003) 11 SCC 559, for the purpose of shortlisting, and shortlisting at the initial stage and then providing for the competitive written examination was not permisssible. The argument raised on behalf of the petitioners before the Vacation Judge and the Division Bench of this Court, even at the interim stage, has been rejected and rightly so. In addition to the discussion which we shortly would record, we would also, with respect, adopt the reasoning given in the orders of the Benches dated 17th and 18th May, 2007.

11. The facts are not in dispute in the present case. The first and the foremost question that we need to consider is whether any shortlisting criteria can be adopted by the selecting authority, even if it was not so specifically stated in the advertisement. The procedure of shortlisting is not unknown to a process of selection. In various selections and in various forms, the procedure of shortlisting is adopted

to make the process of selection more merit-oriented and administratively convenient. To say that, providing of such criteria *per se* is violative of Articles 14 and 16 of the Constitution of India would, in fact, tantamount to construing the basic principle of service jurisprudence to the very concept of selection on merit.

12. The Supreme Court in the case of *The State of Haryana* vs. *Subash Chander Marwaha and others* [(1974) 3 SCC 220] examined the scope of prescription of higher criteria than the one specified under statutory Rules (Rule 8 of the Punjab Civil Service (Judicial Branch) Service Rules, 1951, held as under:

> "It was, however, contended by Dr. Singhvi on behalf of the respondents that since Rule 8 of Part C makes candidates who obtained 45% or more in the competitive examination eligible for appointment, the State Government had no right to introduce a new rule by which they can restrict the appointments to only those who have scored not less than 55%. It is contended that the State Government have acted arbitrarily in fixing 55% as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned

> in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10 (ii), part C speaks of 'selection for appointment'. Even as there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high standards of competent to fix a score which is much higher than the one required for more eligibility. As shown in the letter of the Chief Secretary already referred to, they fixed a minimum of 55% for selection as they had done on a previous occasion. There is nothing arbitrary in fixing the score of 55% for the purpose of selection, because that was the view of the High Court also previously intimated to the Punjab Government on which the Haryana Government thought fit to act. That the Punjab Government later on fixed a lower score is no reason for the Haryana Government to change their mind. This is essentially a matter of administrative policy and if the Haryana State Government think that in the interest of judicial competence persons securing less than 55% of marks in the competitive examination should not be selected for appointment, those who got less than 55% have no right to claim that the selection be made of also those candidates who obtained less than the minimum fixed by the State Government. In our view the High Court was in error in thinking that the State Government had somehow contravened Rule 8 of Part C. "

13. The Supreme Court in the case of *Government of Andhra Pradesh vs. P. Dilip Kumar and another* [(1993) 2 SCC 310] was concerned with direct recruitment to the post of Deputy Executive

Engineer. The Rule prescribed was Bachelor Degree in Engineering as the minimum qualification. The authorities having taken a decision to prefer Post Graduates in Engineering out of the ones who qualified than the Bachelor Degree Holders, while rejecting the challenge on the ground of Articles 14 and 16 of the Constitution of India, the Court held as under:

> “ The matter may be looked at from another viewpoint. The word 'preference' as understood in ordinary parlance means preferring or choosing as more desirable, favouring or conferring a prior right. What then is the purpose and object sought to be achieved by the insertion of the preference clause in the rule? There is no doubt that preference was sought to be granted under Note 1 to post-graduates in the larger interest of the administration. How would the interest of the administration be served by granting preference to post-graduates? It is obvious that it was thought that on account of their higher mental equipment the quality of performance that the State will receive from highly qualified engineers would be better and of a high order. In other words, the State considered it necessary to strengthen the engineering service by recruiting post-graduates to the extent available so that the State may benefit from their higher educational qualifications and better performance. If this was the objective surely it would not be realised unless post-graduates are treated as a class and given preference en bloc over the graduates. Since sufficient number of post-graduates ma y not be available from the feeder channels and even if available cannot be promoted out of turn without causing heart burns, it was sought desirable to resort to such large scale recruitment directly from the open market. The underlying idea of the memo dated October 13, 1978 was the same but certain difficulties

were felt in resorting to enforcement of the preference clause at the promotion stage and that is why the second part came to be inserted in Note 1 but no such difficulty would be experienced in strengthening the cadre through direct recruitment. But then it was said what was the need for the PSC to hold the written test by inviting applications from graduates and subjecting them to test? That was the reason that there was no guarantee that sufficient number of post graduates would qualify for selection and appointment. But if the preference rule were to be implemented as held by the Tribunal it would apply only where the post-graduate and graduate candidates have secured the same number of marks. If the rule so implemented is carried to its logical end it would ultimately resolve a tie only at the last rung of the ladder because ties at higher levels would be resolved by a post graduate being followed by a graduate in the select list. The question of elimination would really arise at the last placement in the list and hence the real purpose of the preference rule would not be served. That is why this Court in Md. Usman Case approved of this method of recruitment as most reasonable. There is nothing arbitrary or unreasonable in the employer preferring a candidate with higher qualification for service. It is well settled by a catena of decisions that classification on the basis of higher educational qualification to achieve higher administrative efficiency is permissible under our constitutional scheme. See Roshan Lal Tandon vs. Union of India, AIR 1967 SC 1889; State of J & K vs. Triloki Nath Khosa, (1974) 1 SCC 19; Md. Sujat Ali vs. Union of India, (1975) 3 SCC 76; Roop Chand Adlakha v. Delhi Development Authority, 1989 (Supp) 1 SCC 116, V. Markendeya v. State of A.P., 1989 (3) SCC 191 and Sanatan Gauda v. Berhampur University, 1990 (3) SCC 23.

15. The second decision to which our attention was invited is a judgment of a learned single Judge of the Gujarat High Court in *Gujarat State Sales Tax Non-Gazetted Employees' Association v. State of Gujarat, 1988 (1) SLR 452*. In that case 120 posts of Sales Tax Tax

Inspectors were required to be filled in by direct selection. An advertisement was issued in the newspapers and as many as 15,000 candidates applied in response thereto. This necessitated screening of the candidates at the threshold. It was found that more than 1000 applicants were holding first class degrees in different faculties of recognised Universities; 580 of them were first class Commerce graduates, 101 first class Arts graduates and about 500 first class Science graduates. Having regard to the number of vacancies the field of of choice was restricted to first class graduates only and it was decided not to call for interview a second class or third class graduate including graduates having Commerce degree with Accountancy as a subject. It was this decision which was put in issue before the learned single Judge by candidates who were eliminated at the threshold from consideration. The relevant rule provided that the appointment to the post of Sales Tax Inspectors shall be made (a) by direct selection or (b) by promotion. In so far as direct selection was concerned, the educational qualification required was stated to be a degree of a recognised University. The proviso laid down as under:

“Provided that preference shall be given to a candidate who possesses the degree of B.Com with Accountancy or Chartered Accountants, or possesses a qualification recognised to be equivalent to such examination by the Government of Gujarat.”

In the context of this preference rule it was observed in para 7 of the judgment as under:

“ To hold that the rule of preference enacted to give to Commerce Graduates with Accountancy or to candidates having other prescribed qualifications an absolute preference over the graduates of other faculties would be to denude the substantive provision of much of its force and effect and to cover the rule of preference into a rule of reservation thereby obliterating altogether the right of other candidates possessing

degree of recognised Universities in various other faculties to be considered for the post."

It is true that notwithstanding the preference rule it is always open to the recruiting agency to prescribe a minimum eligibility qualification with a view to demarcating and narrowing down the field of choice with the ultimate objective of permitting candidates with higher qualifications to enter the zone of consideration. It was, therefore, held that screening a candidate out of consideration at the threshold of the process of selection is neither illegal nor unconstitutional if a legitimate field demarcating the choice by reference to some rationale formula is carved out. Thus the challenge based on Articles 14/16 of the Constitution was repelled. We are in agreement with the ratio of this decision and that is enough to negative the claim of candidates who had preferred O.A. Nos. 1736 to 1739 of 1990 and who were not called for interview on their failing to secure the minimum qualifying marks in the written test.

16. In the present case also the zone of consideration was narrowed by eliminating candidates who did not succeed in the qualifying test and out of those who succeeded in the qualifying test and secured the minimum marks after interview were considered and thereafter in the process of selection the preference rule was applied by first choosing the post graduates and thereafter the graduates. We have already pointed out above that classification on the basis of higher educational qualification with a view to achieving improvement in administrative performance is not abhorrent to Articles 14/16 of the Constitution. We are, therefore, of the opinion that the view taken by the learned single Judge of the High Court on a true interpretation of the relevant rule in the context of the historical background was a plausible view and should commend acceptance as it would advance the cause of efficiency in a highly technical service. We, therefore, think that even if two views were possible, the Tribunal ought not to have unsettled the legal position settled earlier by the High Court with which even this Court

> refused to interfere in SLP. For the foregoing reasons, we do not approve of the view subsequently taken by the Tribunal."

14. The Supreme Court in the case of *Madhya Pradesh Public Service Commission* vs. *Navnit Kumar Potdar and another* (1994 6 SCC 293, while examining the matter in relation to prescription of shortlisting criteria where the minimum eligibility criteria is fixed by the statute, expressed the view that the Selection Board could still fix a higher criteria for calling candidates for viva voce test. While holding that such shortlisting would be part of the selection process without altering the minimum qualifications, the Court in relation to appointment of Presiding Officers of Labour Court held as under:

> "6. The question which is to be answered is as to whether in the process of short-listing, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour court. It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates from amongst the applicants. In most of the services, screening tests or written tests have been introduced to limit the number of candidates who have to be called for interview. Such

screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the Courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate.

9. In *Kothari Committee*' *s*Report on the "Recruitment Policy and Selection Methods for the Civil Services Examination" it has also been pointed out in respect of interview where a written test is also held as follows.

"The number of candidates to be called for interview, in order of the total marks in written papers, should not exceed, we think, twice the number of vacancies to be filled....."

In this background, it is all the more necessary to fix the limit of the applicants who should be called for interview where there is no written test, on some rational and objective basis so that personality and merit of the persons who are called for interview are properly assessed and evaluated. It need not be pointed out that this decision regarding shortlisting the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of shortlisting shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of shortlisting is part of the process of selection. Once the applicants are received and the selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short listed, the process of selection commences. If

> with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience. This process will not be in conflict with the requirement of Section 8 (3) (c) which prescribes the eligibility for making an application for the post in question. In a sense Section 8 (3) (c) places a bar that no person having less than five years of practice as an advocate or a pleader shall be entitled to be considered for appointment to the post of Presiding Officer of the Labour Court. But if amongst several hundred applicants, a decision is taken to call for interview only those who have completed seven and half years of practice, it is neither violative nor in conflict with the requirement of Section 8 (3) (c) of the Act."

15. The Supreme Court in yet another case titled *Union of India and another* vs. *T. Sundararaman and others*, [1997 (4) SCC 664] held that where the number of applications received in response to an advertisement is large and it will not be convenient or possible for the Commission to interview all the candidates, the Commission may restrict the number of candidates to a reasonable limit on the basis of qualifications and experience higher than the minimum prescribed in the advertisement or by holding a screening test. Holding of screening test for the purpose of shortlisting was held to be a matter squarely within the function and powers of the Commission and the Court also observed that a ratio of 3: 5 candidates for one post is normally

accepted depending upon the number of vacancies (Refer *State of Punjab and others* vs. *Manjit Singh and others (2003) 11 SCC 559)].*

16. Now, if we examine the facts of the present case in light of the above principles, the irresistible conclusion has to be that providing of a shortlisting criteria is part of the process of selection and squarely falls in the domain of the selecting authority. Firstly, as a matter of fact, the contention of the petitioners that providing of such a criteria was contrary to the terms of the advertisement and, in any case, not within the scope thereof, deserves to be rejected. Clause 10 of the advertisement gives right to the High Court to introduce any shortlisting criteria and reads as under:

> "10. High Court reserves its right of shortlisting at the time of scrutiny of applications by applying uniform and reasonable norms. High Court also reserves its right to make appointment by invitation."

The above clause puts the matter beyond ambiguity and clearly empowers the High Court to introduce a shortlisting methodology even at the time of scrutiny of application. The only mandate of the advertisement is that such a method has to be uniformly applied and may be reasonable. We are unable to see as to how the two

conditions adopted as shortlisting criteria can be termed as unreasonable. It is a matter of common knowledge that large number of applications are received for a post and in the present case for 21 posts, more than one thousand applications were received. Even after the shortlisting criteria upon scrutiny of applications there were 168 applicants for 21 vacancies. This provides a very fair competition and in no way be termed as unreasonable or violative of any protection available to the applicants. There is an apparent nexus between the introduction of the criteria and process of selection coupled with the object of selection process. As already indicated, it is necessary for the High Court to take all measures and adopt stringent standards in order to select meritorious candidates out of the large number of applicants. This twin purpose could be achieved only when the applicants are subjected to various checks and balances for which reasonable number of candidates would be essential. The minimum qualification provided in the advertisement was that a candidate must be a holder of Degree in Law and should have practiced for seven years on the date of advertisement. Keeping in view the number of applications, shortlisting criteria was adopted requiring that only person with 55 per cent marks in Law would be entitled to take the written examination and that he/she should be an income-tax payee. In the present times, either

of these conditions cannot be termed as unreasonable or harsh. It is expected of a person who wishes to be appointed to the post of District Judge that he must be an income tax payee, should file income tax returns and also have 55 per cent marks in his/her Law Examination.

17. The sole purpose of introducing such scrutiny criteria or interview is to search and select the best amongst the applicants. Larger the number of applicants, greater are the difficulties in carrying out a fair selection. In the case of *M.P. Public Service Commission* vs. *Navnit Kumar Potdar*, [1994 (6) SCC 293], the Supreme Court did indicate that it may not be possible for the Selection Board to interview large number of candidates completely disproportionate to the number of vacancies. To maintain excellence and real purpose of holding written examination and then interview, it would be necessary to apply reasonable and fair test of shortlisting. More than 500 candidates were permitted to take the written examination for 21 vacancies which itself frustrates the plea of arbitrariness taken by the petitioners. The criteria of shortlisting was uniformly applied to all the candidates at the time of scrutiny of applications and as such the action of the respondents cannot be faulted with.

18. An imaginary argument was advanced on behalf of the petitioners that filing of income tax returns being altered to income tax payee has caused a serious prejudice inasmuch as they might have asked for exemptions under the provisions of the Income tax Act and, therefore, not paid the tax. It was also contended that the female applicants are entitled to higher rate of exemptions in comparison to the male counterparts and thus this has even further reduced their chances for induction into the service. The argument is misconceived in law and on fact. The criteria was very carefully adopted and in furtherance to the application form itself, clause 17 of the application referred to the years of practice, years of professional net earnings during last three years and whether the applicants paid income tax. In addition to this, they were required to submit their returns. How does the expression “income tax payee” goes beyond the scope of the advertisement or the application form? It is a necessity which need not even invite the attention of the Court. It is expected that an Advocate who has been filing returns for three years preceding the date of the application would at least pay tax in any one year in all the years despite benefit of exemptions. No quantum of payment of tax was the basis of the said criteria. But it was certainly expected of every applicant that he would disclose his true income and would be paying the tax due. The

argument, as already noticed, misconstrues the language of the criteria as well as the criteria. What is noteworthy is that none of the petitioners' candidature was rejected on the basis of the alleged interpretation of the criteria. For the purpose of convenience, we may refer to the reason for which their respective applications were rejected.

I. Petitioners in Writ Petition No. 3930 of 2007

Sr.No.	Regn.No.	Name of the candidates	Reason for rejection of applications.
1.	117	Smt. Mukulika Shrikant Jawalkar	1. Return of taxable income not filed.
2.	102	Smt.Vrushali Vijay Joshi	1. LL.B. Marksheet not submitted and LL.B. Percentage or particulars of Marks not mentioned in the application.
3.	715	Shri Shankar Fakira Rathod	1. Below 55% marks in LL.B.
4.	589	Shri Hemant Suklal Rahangadale	1. Application is not submitted in own hand writing. 2. Return of taxable income not filed. 3. LL.B. Percentage or particulars of marks not mentioned.
5.	856	Smt. Sadhana Manoharrao Badiye	1. Return of taxable income not filed. 2. Below 55% marks in LL.B.
6.	635	Mrs. Kavita Shambhau Nikhade	1. Return of taxable income not filed. 2. Below 55% marks in LL.B.
7.	1074	Shri Manoj Kumar Mishra	1. Application fee not received. 2. Below 55% marks in LL.B.
8.	650	Shri Dayashankar Annaji Sonwane	1. Extra photograph not attached with the application. 2. Certificate as to knowledge of Marathi has not been produced.
9.	915	Shri Raju Balgovind Hingnekar	1. Return of taxable income not filed. 2. Below 55% marks in LL.B.

Sr.No.	Regn.No.	Name of the candidates	Reason for rejection of applications.
10.	605	Miss Jyotsna Harihar Shendey	1. Return of taxable income not filed.

2. Petitioners in Writ Petition No. 4644 of 2007

Sr.No.	Regn.No.	Name of the candidates	Reason for rejection of applications.
1.	90	Shri Devanand Bhaskarrao Aradhe	1. Below 55% marks in LL.B.
2.	894	Shri Shivkumar Ganpatrao Dige	1. LL.B. Marksheet not submitted and LL.B. Percentage or particulars of Marks not mentioned in the application.

3. Petitioners in Writ Petition No. 4645 of 2007

Sr.No.	Regn.No.	Name of the candidates	Reason for rejection of applications.
1.	111	Smt. Ranjana Dattatray Reddy	1. Below 55% marks in LL.B.
2.	292	Smt. Veena Madhukarrao Potrekar	1. Below 55% marks in LL.B.
3.	36	Smt. Sunita Nagnathrao Supare	1. Below 55% marks in LL.B.
4.	338	Smt. Archana Shrikrishna Singh	1. Return of Taxable income not filed. 2. Below 55% marks in LL.B.
5.	124	Shri Shivaji Sarjerao Nimbalkar	1. LL.B. Marksheet not submitted and LL.B. Percentage or particulars of marks not written in the application.
6.	194	Shri Sunil Prabhudeo Sonpawale	1. Below 55% marks in LL.B.
7.	1057	Smt. Sanghmitra Bansidhar Wadmare	1. Below 55% marks in LL.B.

The above tabular statement clearly shows that not only the arguments advanced on behalf of the petitioners but even the writ petitions itself

are misconceived. The applicants do not even satisfy the basic conditions of academics and even merely filing an income tax returns.

19. Let us also examine the rights of the petitioners in questioning the validity of the criteria. We have already held that no error in law or on facts of the case can be traced in the decision of the competent authority to introduce shortlisting criteria at the scrutiny stage itself. The contention raised before the Court is that upon submission of the application, a fundamental right of the petitioners is infringed and they are denied equality. It is a settled principle of law that neither the submission of an application nor existence of vacancies gives even a legal right to a candidate to be selected for appointment, much less a fundamental right. In the case of *Subash Chander Marwaha* (supra), the Supreme Court clearly stated that the mere fact that a candidate's name appears in the select list will not give him a right to ask for mandamus that he be appointed. Even where the candidates are selected, how many appointments are to be made would fall in the domain of the appointing authority. In another case in *N. Mohanan* vs. *State of Kerala and others,* 1997 (2) Recent Services Judgments page 772, where the candidates had even been selected but no list was annexed, the Court held that the candidates do not have any right to

claim appointment. In terms of Articles 14 and 16 of the Constitution of India, an applicant has a legitimate right to be considered for the selection but only in accordance with the Rules and prescribed procedures. There is no indefeasible legal, much less a fundamental, right vested in an applicant to claim appointment. By adopting a criteria which was uniformly applied to all applicants, the petitioners were found not eligible and thus not permitted to take the written examination. This the petitioners can hardly question.

20. It is true that relevant date for determining eligibility would be the last date for submission of an application but equally accepted is the principle that the concerned authority has the right to alter and amend the rules, give up the process of selection and even re-advertise the posts. In a case where selections were held in furtherance to the Rules and advertisement was in 1996 and a process of selection was given up, policy of the Government changed and a fresh advertisement was issued in the year 1999 with certain changes, the challenge of the petitioners that they had a vested right was rejected by the Court in the case of *Babita Rani* vs. *State of Haryana and others,* 2003 (1) SLR 461. The Court held that the Government had the right and competence to

make selection on the basis of the amended criteria, even though the amended Rules were prospective in operation. Even otherwise, the contention of the petitioners implies hesitance on their part to face fair competition. Securing of 55% of marks in the present days would be the minimum required academic standard. Merely because it exposes them to higher standards of scrutiny or test would be no ground for judicial intervention by this Court. Similar plea was rejected by the Punjab and Haryana High Court in the case of *Rajinderpal Singh* vs. *State of Haryana and others*, 2003 (6) SLR 676. The contention that the petitioners would have to achieve unachievable higher standard marks in the interview or they are expected to have performed very well in their written examination and/or the qualifying examination would be a submission which in essence would be destructive of principle on merit and maintenance of higher excellence in the judicial services of the State. Why a candidate who is taking competitive examination and his qualifying examination with all preparedness be not sure of securing at least 50 or 55 per cent marks as the case may be. Effort and endeavour on the part of the candidate should be to do well and secure higher percentage and they are expected to do well both in written examination as well as the interview. Of course, it is a process which commences only if they had secured at least 55 per cent marks in their

qualifying examination. The entire process of selection to the post of the District Judge as examined by us cannot be faulted either on fairness or being unjust.

21. We may also notice here that no interim order was granted to the petitioners and the orders of the Benches declining such orders were never challenged by the petitioners before the Court of competent jurisdiction. In the meanwhile, the entire process of selection has concluded and thus it would otherwise be unfair and unjust to interfere with the process of selection at this juncture.

22. Resultantly, all the writ petitions must fail and are hereby dismissed. However, in the facts of the case, we leave the parties to bear their own costs.

CHIEF JUSTICE

SMT. RANJANA DESAI, J.